673.

SUPREME COURT OF THE UNITED STATES.

No. 33.

JOSEPH J. ANDREWS, PLAINTIFF IN ERROR,

vs.

LEWIS W. POND, AND OTHERS.

ERROR TO THE CIRCUIT COURT UNITED STATES, ALABAMA, (S. D.)

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UNITED STATES OF AMERICA.

The President of the United States to the Judges of the Circuit Court of the United States, for the Ninth Judicial Circuit and Southern District of Alabama:

Because, in the record and proceedings, as also in the rendition of judgement, in a plea which is in the said circuit court before you, between Joseph J. Andrews, plaintiff, and Lewis W. Pond, Thomas Converse, and Francis Wadsworth, defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, and it being fit, if error there be, the same should be duly corrected, and full and speedy justice be done the parties aforesaid, you are hereby commanded, if judgement be rendered, that then, under your seal, distinctly and speedily, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further proceedings therein to correct the error, what, of right, according to law, and the custom of the United States, should be done.

[SEAL.] Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-eight.

Issued the fifteenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest, DAVID FILES
Clk. So. Dist. Ala.

UNITED STATES OF AMERICA.

To Lewis W. Pond, Thomas Converse, and Francis Wadsworth, or Gordon, Campbell, and Chandler, your Attornies, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth judicial circuit, wherein Joseph J. Andrews is plaintiff, and the said Lewis W. Pond, Thomas Converse, and Francis S. Wadsworth, are defendants

in error, to show cause, if any there be, why the judgement in the said writ of error should not be corrected, and speedy justice should not be done in their behalf.

Witness the honorable John McKinley, one of the justices of the Supreme Court of the United States, this fifteenth day of May, A. D. 1838.

J. McKINLEY,
Associate Justice of the Supreme Court of the United States.

A true copy of the within citation served on us in open court, the 15th day of May, 1838.

GORDON, CAMPBELL, and CHANDLER,
Att's for defendants in below.

CIRCUIT COURT OF THE UNITED STATES,
For the Ninth Judicial Circuit, Southern District of Alabama.

JOSEPH J. ANDREWS,
vs.
POND, CONVERSE, and WADSWORTH. } In Error.

Know all men by these presents, that we, Joseph J. Andrews, James B. Craighead, and Joseph Wood, are held and firmly bound unto the above named Pond, Converse, and Wadsworth, in the sum of five hundred dollars, to be paid to the said Pond, Converse, and Wadsworth, their executors or administrators, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executor, and administrator, firmly by these presents, sealed with our seals, and dated this fifteenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Whereas the above named Joseph J. Andrews hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgement rendered in the above entitled suit by the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama.

Now therefore, the condition of this obligation is such, that if the above named Joseph J. Andrews shall prosecute his said writ of error, to effect and answer all damages and costs, if he fail to make good his plea, then this obligation to be void, otherwise the same shall be, and remain in full force and virtue.

JOSEPH J. ANDREWS, [SEAL.]
JAS. B. CRAIGHEAD, [SEAL.]
JOSEPH WOOD, [SEAL.]

Signed, sealed, and delivered, in presence of
DAVID FILES, *Clerk.*

I, David Files, clerk of the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, do hereby certify, that the above is a true copy of the original bond on file in my office.

In testimony whereof, at office in the city of Mobile, I have hereunto set my hand, and affixed the seal of the said circuit court, this twentieth day of June, in the year of our Lord one thousand eight hundred and thirty-eight.

[SEAL.]

DAVID FILES,
Clk. So. Dist. Ala.

Pleas had before the Honorable the Circuit Court of the United States, in and for the Ninth Judicial Circuit and Southern District of Alabama, at a term thereof, begun and held in and for said district at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before

Be it remembered, that heretofore, to wit, on the seventh day of July, in the year of our Lord one thousand eight hundred and thirty-seven, Joseph J. Andrews, sued out of said court his writ of capias ad respondendum against Lewis W. Pond, Thomas Converse, and Francis L. Wadsworth, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Circuit Court of the United States, for the Ninth Judicial Circuit, Southern District of Alabama.

JOSEPH J. ANDREWS,
vs.
POND, CONVERSE, AND WADSWORTH.

The President of the United States to the Marshal of said District greeting:

You are hereby commanded to take the bodies of Lewis W. Pond, Thomas Converse, and Francis L. Wadsworth, merchants and copartners, under the name and firm of Pond, Converse, and Wadsworth, who are citizens of the State of Alabama, and them safely keep, so that you have them before the honorable the circuit court aforesaid, at the place of holding said court at Mobile, on the second Monday of October next, to answer unto Joseph J. Andrews, who is a citizen of the State of New York, in a plea of trespass on the case, in assumpsit to his damage fourteen thousand dollars; herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this second Monday of April, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued the seventh day of July, in the year of our Lord one thousand eight hundred and thirty-seven.

DAVID FILES,
Clerk Sou. Dist. Ala.

I acknowledge myself security for costs, at the instance of the plaintiff, in the above suit.

JAMES B. CRAIGHEAD.

Exchange for $7,287 $\frac{78}{100}$. NEW YORK, March 11th, 1837.

Sixty days after date, of this first of exchange, second of the same tenor and date unpaid, pay to Messrs. Pond, Converse, and Wadsworth, or order, seventy-two hundred and eighty-seven $\frac{78}{100}$ dollars, negotiable and payable at the bank of Mobile, value received, which place to account of

Your obedient servant,
(Signed) D. CARPENTER.

To Messrs. SAYRE, CONVERSE, & Co.
Mobile, Ala.

(Endorsed) Pond, Converse, and Wadsworth.

This action is founded on a bill of exchange, of the above tenor and effect, which has been protested for non-acceptance and non-payment.

Attest, JAS. B. CRAIGHEAD,
Plff's Att'y.

Executed on P. and W., August 9th, 1837.
R. L. CRAWFORD, *M.*
By A. C. LOVE, *D. M.*

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for the district aforesaid, at Mobile, on the second Monday of October, in the year of our Lord one thousand eight hundred and thirty seven, the plaintiffs filed their declaration in the words and figures as follows, to wit:

CIRCUIT COURT OF THE UNITED STATES
Southern District of Alabama.

MOBILE COUNTY, October Term, 1837.

Joseph J. Andrews, who is a citizen of the State of New York, by his attorney James B. Craighead, complains of Lewis W. Pond, Thomas Converse, and Francis L. Wadsworth, merchants and co-partners, trading under the firm and style of Pond, Converse, and Wadsworth, who are citizens of the State of Alabama, in custody, &c., of a plea of trespass on the case, for that, whereas, heretofore, to wit,

on the 11th day of March, 1837, at New York, to wit, at said county of Mobile, in said district, one Daniel Carpenter made his certain bill of exchange in writing, and then and there directed the said bill of exchange to Messrs. Sayre, Converse & Co., Mobile, Ala., and thereby, then and there requested them to pay, sixty days after the date of the said bill of exchange, to the said defendants, or order, seven thousand two hundred and eighty-seven dollars seventy-eight cents, value received, negotiable and payable at the bank of Mobile, and then and there delivered the said bill to the said defendants, and the said defendants, to whom, or to whose order, the payment of the said sum of money, in the said bill of exchange, was to be made before the payment of the same, or any part thereof, to wit, on the day and year aforesaid, to wit, at said district, endorsed and delivered the said bill of exchange, to the said plaintiffs, and thereby appointed the sum of money, in said bill specified, to be paid to the said plaintiffs. And the said plaintiffs aver that afterwards, to wit, at said district, before the payment of the said sum of money, in the said bill specified, or any part of it, to wit, on the 28th day of March, 1837, the said bill of exchange was presented and shown to the said Sayre, Converse, & Co., for their acceptance, according to the tenor and effect of the said bill, and the said Sayre, Converse, & Co., were then and there required to accept the same; but the said Sayre, Converse, & Co., did not, nor would, at the time when the said bill of exchange was so presented and shown to them for their acceptance thereof, as aforesaid, or at any time afterwards, accept the same; nor did the said Sayre, Converse, & Co., or the said Daniel Carpenter, or the said defendants, or any other person or persons in their behalf, at the time the said bill was so presented for acceptance, or at any other time before or afterwards, pay the said sum of money in the said bill specified, or any part of it to the said plaintiff, but then and there wholly neglected so to do; of all which said several premises, the said defendants, to wit, on the day and year last aforesaid, to wit, at the said district, had due notice.

And whereas, also, afterwards, to wit, on the day of March, 1837, to wit, at said district, the said defendants were indebted to the said plaintiffs, in other, seven thousand two hundred and eighty-seven dollars seventy-eight cents, for money then and there lent by plaintiffs to defendants at their request; and in another like sum, then and there paid out and expended by said plaintiffs to the use of said defendants, for money had and received for plaintiffs' use.

And whereas, the said defendants, to wit, at said district, to wit, on the day and year aforesaid, in consideration of the premises, promised to pay to the said plaintiffs the said several sums of money, respectively, on request, yet they have disregarded their promises, and have not paid said several sums of money, or any, or either of them, to the said plaintiffs, although often requested so to do; but the same to pay, or any part thereof, have hitherto wholly refused, to the plaintiff's damage fourteen thousand dollars, and therefore, he brings his suit.

JAMES B. CRAIGHEAD,
Atto. for Plaintiffs.

And the said plaintiffs aver, that afterwards, to wit, at the said district, when the said bill became due and payable, said bill was presented and shown to and at the said bank of Mobile, and payment of the said sum of money, in the said bill specified, was then and there duly required, but neither the said Daniel Carpenter, no the said defendants did or would pay the said sum of money, in the said bill specified, or any part of it, at the time said bill was so presented and shown for payment as aforesaid, nor did they, before or since, pay the same, or any part thereof, of all which said premises, the said defendants then and there, to wit, at said district, had due notice; by means whereof, and reason of the premises, the said defendants became bound to pay the said piaintiffs the said sum of money in the said bill specified, and being so liable, undertook, and faithfully promised, to pay the said sum of money in the said bill specified, when thereunto afterwards requested, yet the said defendants, although often requested so to do, did not pay to the said plaintiffs, the said sum of money, in the said bill specified; but the same to pay, or any part thereof, have hitherto wholly refused, and still doth refuse, to the plaintiff's damage fourteen thousand dollars; and therefore he sues.

J. B. CRAIGHEAD,
Atto. for Plaintiffs.

And afterwards, to wit, at the same term of the court aforesaid, begun and held in and for the district aforesaid, at Mobile, the defendants filed their plea in the words and figures following, to wit:

POND, CONVERSE, and WADSWORTH,
vs.
J. J. ANDREWS.

The defendants comes and defends the wrong and injury when, and say that they did not undertake and promise as the said plaintiffs in his declaration hath alleged against him, and of this he puts himself upon the country.

GORDON, CAMPBELL, and CHANDLER,
Atto's for Deft's.

And the said plaintiffs, by his attorney, comes in and for replication, doth the like.

CRAIGHEAD.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for the district aforesaid, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor, John McKinley, presiding judge of said court, the following proceedings were had, to wit:

This day came the parties, by their attorneys, whereupon, also, came the following jury, viz: E. Chidsey, F. F. Swan, A. P. Cleavland, E. O. Jones, J. Howard, J. G. Day, A. Hayden, C. Keith, J. W. Roper, Stephen Snow, J. Byrnes, jr.; and D. Hubbard, twelve good

and lawful men, who being elected, tried, and sworn, upon their oaths, do say, that we, the jury, find for the defendant. It is therefore considered by the court, that said the defendants go hence, without *day*, and recover their costs.

Whereupon, during the term aforesaid, at the trial of said cause, and before the same was submitted to the jury aforesaid, the said plaintiffs, by his counsel, tendered to his honor, the presiding judge, the bill of exceptions, which was signed and sealed, and which said bill and the exhibits thereto annexed, are in the words and figures following, to wit:

JOSEPH J. ANDREWS,
vs.
POND, CONVERSE, and WADSWORTH,

Be it remembered, that on the trial of this cause, the plaintiffs produced and read in evidence, the following bill of exchange:

Exchange for $7,287 $\frac{78}{100}$. NEW YORK, March 11th, 1837.

Sixty days after date of this first of exchange, second of same tenor and date unpaid, pay to Messrs. Pond, Converse, and Wadsworth, or order, seven thousand two hundred and eighty-seven $\frac{78}{100}$ dollars, negotiable and payable at the Bank of Mobile, value received, which place to account of

Your obedient servant,
D. CARPENTER.

To Messrs. SAYRE, CONVERSE, & Co.,
Mobile, Ala.

Endorsed Joseph J. Andrews, Pond, Converse, and Wadsworth.

Plaintiffs further proved, that it was set to the credit of the account current then existing between H. A. Andrews, & Co., of New York, and S. Andrews, of Mobile, Ala.; that S. Andrews had received it endorsed by defendants before its maturity, and had transferred it to plaintiffs before maturity, and that after such transfer, it was a cash credit in the current account between H. M. Andrews & Co. and S. Andrews; the defendants offered under this issue, the statute of New York, without date, and the depositions, to prove that the said bill of exchange was usurous.

Deposition of witnesses sworn and examined the fifteenth day of March, one thousand eight hundred and thirty-eight, at the city of New York, under and by virtue of a commission issued out of the circuit court of Montgomery county, of the State of Alabama, in a certain cause therein depending between Joseph J. Andrews, plaintiff, and Lewis W. Pond, Thomas M. Converse, and Francis L. Wadsworth, defendants.

[Rec. No. 33.—2.]

George Jackson, of the city of New York, clerk, being sworn and examined on the part of the defendants doth depose and say, as follows:

To the first interrogatory. He saith, I know nothing of such bill.
To the second interrogatory. He saith, I know nothing.
To the last interrogatory. He saith, I know nothing.
To the first cross interrogatory he directed to be put to this witness. He saith, I know nothing in relation to such a bill.
To the second and last interrogatory. He saith, I know nothing.

GEORGE JACKSON.

Examination taken, reduced to writing, subscribed and sworn to, this 15th day of March, 1838, before me, as witnessing hand and seal,

J. R. WHITING, [SEAL.]
Commissioner.

John V. Greenfield, of the city of New York, merchant, being duly sworn, doth depose and say, as follows:

To the first interrogatory. He saith, I cannot say that I do; I was on or about the 11th of March, 1837, at the office of H. M. Andrews & Co., in the city of New York, with Mr. Pond, one of the defendants, at which time there was a conversation between him and Andrews relative to the return of a protested, which I believe was six thousand dollars, at which time Mr. Pond agreed upon Andrew's demand to pay ten per cent. damages, and ten per cent interest and exchange upon a new bill to be given, besides expences upon the protested bill, rather than be sued on the protested bill here. Mr. Pond was at that time threatened with a writ. I have no personal knowledge that a new bill was given, and cannot state of my own knowledge, that such agreement was ever carried into effect.
To the second interrogatory. He saith, I know nothing.
To the last direct and to all the cross interrogatories. He saith, that he has stated all his knowledge in relation thereto, in his answer to the first direct interrogatory.

JOHN. V. GREENFIELD.

Examination taken, reduced to writing, subscribed and sworn to, the 15th day of March, 1838, before me as witnessing hand and seal.

J. R. WHITING, [SEAL.]
Commissioner.

Deposition of Thomas C. Spotswood, a witness sworn and examined, this twenty-third day of March, in the year one thousand eight hundred and thirty-eight, at the city of New York, under and by virtue of a commission issued out of the circuit court of Montgomery county, in the State of Alabama, in a certain cause therein depending between Joseph J. Andrews, plaintiffs, and Lewis W. Pond, Thomas M. Converse, and Francis L. Wadsworth, defendants.

Thomas C. Spotswood, of the city of New York, assignee of H. M. Andrews, & Co., being duly sworn and examined, on the part of the defendant, doth depose and say, as follows:

To the first interrogatory. He saith, I was agent for H. M. Andrews & Co., on the 11th day of March, 1837, but not for the plaintiffs.

To the next interrogatory. He saith, he does know of such bill, and the account or memorandum hereto annexed contains a statement of the consideration given for said bill; which memorandum is signed by the deponent.

To the third interrogatory. He saith, that no payment has been made thereon, to his knowledge.

To the last interrogatory. He saith, that said bill was remitted by H. M. Andrews, & Co., to S. Andrews, Mobile, for collection, in account of H. M. Andrews & Company; it was a remittance to S. Andrews in account.

THOS. C. SPOTSWOOD.

Examination taken, reduced to writing, subscribed and sworn to, this 23d day of March, 1838, before me as witnessing hand and seal.

J. R. WHITING, [SEAL.]
Commissioner.

No. 806.

D. Carpenter's draft on Sayre, Converse, & Co., Mobile, in favor of Sayre, Converse, and Wadsworth, dated, New York, March 11, 1837, at 60 days date for $7,287 $\frac{78}{100}$, due May $\frac{10}{13}$, 1837.

The above bill for $7,287 $\frac{78}{100}$ was received by H. M. Andrews & Co. New York, on the 11th of March, 1837, in consideration on settlement for the following, viz:

No. 269.

E. Handricks draft on Daniel Carpenter, Montgomery, Alabama, in favor of Hanrick and Forrest, dated New York, December 20th, 1836, at 60 days date, for $6,000, due February, $\frac{18}{21}$, 1837, and under protest for non-payment - - - - $6,000 00

Damages on ditto 10 per c. -	$600 00	
Interest 18 days a 7 per c. -	21 00	
Protest $2—postage $2 $\frac{25}{100}$ -	4 25	
		625 25
		$6,625 25
Exchange 10 per cent., being difference of exchange between Mobile and New York, on the 11th of March, 1837 - - - -		662 53
		$7,287 78

THOS. C. SPOTSWOOD.

NEW YORK, March 24, '38.

At the execution of a commission for the examination of witnesses between Joseph J. Andrews, plaintiffs, and Lewis W. Pond, Thomas M. Converse, and Francis L. Wadsworth, defendants, this paper was produced by, and sworn to, by the witness Thomas C. Spotswood, as witness my hand and seal.

J. R. WHITING, [SEAL.]
Commissioner.

Deposition of witnesses sworn and examined the twenty-eighth day of March, one thousand eight hundred and thirty-eight, at the city of New York, under and by virtue of a commission issued out of the circuit court of Montgomery county, of the State of Alabama, in a certain cause therein depending between Joseph J. Andrews, plaintiffs, and Lewis W. Pond, Thomas M. Converse, and Francis L. Wadsworth, are defendants.

John Delafield, of the city of New York, president of the Pheonix Bank, being duly sworn and examined on the part of the defendants, doth depose and say, as follows:

To the first interrogatory propounded to him. He saith, from three to five per cent.; it varied; my knowledge is acquired from having dealt in exchange, during that period, for the Pheonix Bank; I know nothing of the rates otherwise; I believe on the eleventh of March of that year, it was three per cent.

To the last interrogatory. He saith, he knows nothing.

To the cross interrogatories. He saith, he knows nothing.

Examination taken, reduced to writing, subscribed and sworn to, this 28th March, 1838, before me, as witnessing hand and seal.

J. R. WHITING, [SEAL.]
Commissioner.

Robert White, of the city of New York, cashier of the Manhatten Company, being duly sworn and examined on the part of the defendants, doth depose and say as follows:

To the first interrogatory. He saith, by reference to our books, I find we charged our dealers, during the month of March, 1837, from five to seven per cent.; I cannot answer what it was on the eleventh day of said month of March.

To the last interrogatory. He saith, he knows nothing.

To the cross interrogatories. He saith he knows nothing.

ROBERT WHITE.

Examination taken, reduced to writing, subscribed and sworn to, this 28 day of March, 1838, before me, as witnessing hand and seal.

J. R. WHITING, [SEAL.]
Commissioner.

Morris Robinson, of the city of New York, agent for the Bank of the United States, being duly sworn and examined on the part of the defendants, doth depose and say as follows:

To the first interrogatory. He saith. By reference to the books, I find we charged our dealers during the month of March, 1837, from three to five per cent.; three for short, and five for long paper. It does not appear that we had any on the eleventh day of March, of that year; from the tenth to the fifteenth of that month, we charged three per cent. for short, and five for long paper.

To the last direct interrogatory. He saith, I know nothing.

To the cross interrogatories. He saith, I know nothing.

M. ROBINSON.

Examination taken; reduced to writing, subscribed and sworn to, this 28th day of March, 1838, before me as witnessing my hand and seal.

J. R. WHITING, [SEAL.]
Commissioner.

To prove that the said bill of exchange was usurous, according to the statute and laws of the State of New York, plaintiffs objected to the reading of the statutes and depositions aforesaid, because the contract was not made with a view of the statute or laws of New York. But the bill of exchange was usury or not by the laws and statutes of Alabama, and that the contract was subject only to the laws of the State of Alabama, as to its obligatory force and validity; and he further objected; that if this contract were to be decided by the statute of New York, that this proof could not be given under this issue; but the court overruled all these objections, and permitted the depositions and statute to be read to show the bill of exchange to be void by the laws of New York; to all which plaintiffs except. Plaintiffs then offered to prove by Joseph Wood that the banks purchased bills at a far less rate of exchange than others, that they never bought any than undoubted paper, that from the facility of collecting, remitting, &c., they had many advantages over the citizens at large, and that the exchange of the banks was therefore much lower than the community at large; that there was no fixed rate of exchange between Mobile and New York, that it varied from one to twenty per cent., according to the solvency, punctuality, risk, &c.; that exchange was ever fluctuating, and was high or low, as the risk was great or small; the court rejected this testimony also, to which plaintiffs except. Plaintiffs asked the court to instruct the jury, that if they were satisfied, that the excess over legal interest retained in this bill was taken and contracted for innocently by the parties, without intending to violate the laws against usury, that they might find for plaintiffs, but the court refused this also, and plaintiffs excepts. Plaintiffs moved the court to charge the jury that the contract expressed in this bill of exchange, if to be executed in Alabama, was subject alone to the laws of Alabama against usury, and that the usury laws of New York had

no force, or any thing to do with this investigation; this was refused by the court, and plaintiffs excepts. Plaintiffs next requested the court to charge the jury, that if they believed S. Andrews received the bill before maturity, for a valuable consideration, without any notice of usury, and that plaintiffs received it from S. Andrews, without notice of usury, and before maturity, that the plaintiffs might recover, notwithstanding plaintiffs offered no proof of the consideration he gave for it, to this also, refusal and exception as above. Plaintiffs next moved the court to charge that *that* the variance between the bill declared on, and the one set up as the same bill by defendant's deposition, was fatal in a plea of usury; to which the court refused, and plaintiffs excepts. It appeared that before the bill was delivered by S. Andrews to plaintiffs, it had been, while in the hands of S. Andrews been protested for non-acceptance, which appeared on the face of the bill, there was no evidence of any settled account between H. M. Andrews, & Co., and S. Andrews, or which was creditor or debtor upon the statement of accounts. It was also proved that the expense of transporting specie from New York to Mobile, including insurance and interest, would not exceed one and one half per cent. on the sum transported. Upon the whole case, and the several points stated, the court charged the jury, that if they believed from the evidence, that by the usages of trade between New York and Mobile, there was an established rate of exchange between those places, the drawers and drawees of the bill of exchange here sued on, had a right to contract for such rates of exchange, and that even a higher rate to a small amount, if under the circumstances it did not appear to have been intended to evade the statute against usury, might be allowed by them; but if they believed that no such usage existed, the parties had no right to contract for more than the actual expense of transportation of specie from one place to the other, including interest, insurance, and such reasonable variations therefrom, as above stated; and further, if they believed from the evidence that the drawers of the bill of exchange contracted with the drawers in the State of New York, at the time the bill was drawn for a greater rate of interest than seven per centum per annum, for the forbearance of the payment of the sum of money specified in the bill, although it may have been taken in the name of exchange, the contract is usurous, and unless they believe from the evidence, that the plaintiffs took the bill in the regular course of business, and upon a fair and valuable consideration bona fide paid by him, and without notice of the usury they ought to find for the defendant, otherwise for the plaintiffs; to which opinion, and charge of the court, the plaintiffs, by his counsel, excepts and prays that this, his bill of exceptions, may be signed, sealed, and enrolled; which is done accordingly.

J. McKINLEY, [SEAL.]

I, David Files, clerk of the circuit court of the United States, for the ninth judicial circuit, and southern district of Alabama, do hereby certify, that the foregoing nine pages contain a full, true, and perfect, exemplification of the records and proceedings of a certain suit

lately pending and determined in the court aforesaid, wherein Joseph J. Andrews was plaintiffs, and Pond, Converse, and Wadsworth, were defendants.

In testimony whereof, at office in the city of Mobile I have hereunto set my hand, and affixed the sea. of the said circuit court, this seventeenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

[SEAL.]

DAVID FILES,
Clk. Sou. Dist. Ala.

The interrogatories and commission which were in this record, were taken from the same, by order of John A. Campbell.